

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5424 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-No.

2. To be referred to the Reporter or not?-No.

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

SHREE KALARIA TELIBIYA

UTPADAK SAHKARI MANDLI LTD.

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

Ms.Amee Yajnik, Assistant GOVERNMENT PLEADER,
for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 06/04/98

ORAL JUDGEMENT

1. The petitioner, a Cooperative Society, has been aggrieved by an order dated 23rd June, 1997 passed by respondent No.2 under the provisions of Section 107(1) of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "The Act"), whereby an interim order for winding up of the petitioner-Society has been passed.

2. Facts leading to the present petition are as under :-

The petitioner-Society is a Society, registered under the provisions of the Act, on 4th November, 1991. Object of the Society is to help its members in enhancing the production of oil seeds and for that purpose, the Society supplies to its members seeds of good quality. It also makes necessary arrangements for sale of oil seeds belonging to its members.

3. By an order dated 23rd June, 1997, a copy of which has been annexed and marked Annexure 'F' to the petition, respondent No.2 had passed an interim order under provisions of Sections 107 and 108 of the Act. By virtue of the said order, the petitioner-Society is sought to be wound up. By the said interim order, not only the Society has been provisionally wound up, but a notice has also been given to the Society, calling upon it to show case as to why the Society should not be wound up for the reason that the Society had not taken care to carry out the suggestions made by the Auditor. The Society had also not made any effort to initiate its activities as per the Objects, with which the Society had been formed. Moreover, Meeting of the Managing Committee of the Society was not convened as per the Schedule. The Society had also not paid fees of its Auditors and it also prima facie appeared to respondent No.2 that members of the Managing Committee of the Society were not interested in managing the Society.

4. In view of the above-referred circumstances, respondent No.2 was prima facie of the view that the Petitioner-Society should be wound up and, therefore, an interim order, winding up the petitioner-Society was passed by respondent No.2 under provisions of Section 107(1) of the Act.

5. Learned Advocate Shri Harin Raval, appearing for the petitioner, has submitted that the impugned order is illegal and is against the provisions of the law. It has been submitted by him that before passing the impugned order dated 23rd June, 1997, respondent No.2 ought to have heard the petitioner-Society. It has been submitted by him that though there is no provision with regard to giving hearing before passing such an interim order for winding up, as per law laid down by this Honourable Court in Apexa Cooperative Bank Limited v. District Registrar and others, 1993(2) GLH 861, respondent No.2 was duty bound to hear the petitioner. It is not in dispute that

by virtue of the above-referred judgment delivered by this Court, it has been held that even though an interim order is passed under provisions of Section 107(1) of the Act, the said order is quasi judicial in nature and, therefore, before passing such an order, the concerned Society must be heard.

6. Though several other averments are made in the petition, in my opinion, only on the above-referred ground, the petitioner should succeed. Learned AGP Ms. Amee Yajnik could not dispute the fact that as per law laid down by this Court in the judgment referred to hereinabove, the petitioner-Society ought to have been heard before passing the impugned order. However, she has submitted that the petitioner-Society had given reply to the said show cause notice on 17th July, 1997 and without waiting for the final outcome, the petitioner-Society has rushed to this Court. It has been submitted by her that as the petitioner has already submitted to the jurisdiction of respondent No.2, the petitioner cannot challenge the validity of the said order at this stage. I do not think that there is any substance in the said submission for the simple reason that it was obligatory on the part of the respondent No.2 to hear the petitioner-Society before passing the impugned order. Simply because the petitioner has given reply to the said show cause notice, it cannot be said that the petitioner cannot approach this Court for ventilating his grievances or for challenging the validity of the said order.

7. It is an admitted fact that the petitioner-Society was not heard before the impugned order was passed and, therefore, in my opinion, the said order is violative of principles of natural justice and, therefore, it is illegal, and, therefore, on that ground alone, it deserves to be quashed and set aside.

8. The petition, therefore, is accepted. The order dated 23rd June, 1997 passed by respondent No.2 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(apj)